

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 7**

**RIN 1024-AD41**

**Gateway National Recreation Area, Jamaica Bay Unit, Personal Watercraft Use**

**AGENCY:** National Park Service, Interior

**ACTION:** Proposed Rule

**SUMMARY:** The National Park Service (NPS) is proposing to designate areas for the limited purpose of providing passage access through park waters for personal watercraft (PWC) use in the Jamaica Bay Unit of Gateway National Recreation Area (GATE), New York/New Jersey. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. Individual parks must determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives. The proposed rule designating areas where PWC may be used in the Sandy Hook unit of GATE, New York/New Jersey is published elsewhere in today's Federal Register.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by the number RIN 1024-AD41, by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting comments.

- E-mail NPS at [GATE\\_PWCComments@louisberger.com](mailto:GATE_PWCComments@louisberger.com)
- Mail or hand deliver to: General Superintendent, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10306

For additional information see “**Public Participation**” under SUPPLEMENTARY INFORMATION below.

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7241, Washington, DC 20240. Phone: (202) 208-4206. E-mail: [Jerry\\_Case@nps.gov](mailto:Jerry_Case@nps.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### Additional alternatives

The information contained in this proposed rule for the Jamaica Bay Unit of GATE supports implementation of the preferred alternative from the Environmental Assessment (EA) published April 3, 2003. The public should be aware that three other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

#### Personal watercraft regulation

On March 21, 2000, the NPS published a regulation (36 CFR 3.24) on the management of PWC use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park’s resources and values, other

visitor uses of the area, and overall management objectives. The regulation prohibited PWC use in all park units effective April 20, 2000, except 21 parks, lakeshores, seashores, and recreation areas until individual park units adopted special regulations to manage PWC use. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be permitted to continue.

#### Description of Gateway National Recreation Area and the Jamaica Bay Unit

Gateway National Recreation Area is located in the heart of the New York City metropolitan area. The park, which extends through three New York City boroughs and into New Jersey, consists of more than 26,000 acres and has been assembled from city parks, military sites, and undeveloped land. Congress established GATE in 1972 as one of the first urban parks in the national park system. Gateway National Recreation Area is composed of three distinct units -- Jamaica Bay, Staten Island, and Sandy Hook. These units comprise a seashore ecosystem of wildlife, private communities, and outdoor recreational activities in an urban environment. This proposed rule addresses PWC use in the Jamaica Bay Unit. The proposed rule designating areas where PWC may be used in the Sandy Hook units of GATE, New York/New Jersey is published elsewhere in today's Federal Register.

Jamaica Bay is the largest unit of GATE and is located along the southern shore of Brooklyn and Queens. This unit contains a variety of activity areas, including Frank Charles Memorial Park, Canarsie Pier, Bergen Beach, Plumb Beach, Breezy Point, Fort Tilden, Jacob Riis Park, Floyd Bennett Field, and the Jamaica Bay Wildlife Refuge. Some of the activities include biking, birdwatching, exhibits, gardening, group camping,

hiking, military history, nature study, picnicking, basketball, golf, paddle tennis, sunbathing, swimming, volleyball, art exhibits, music and theater performances, playgrounds, and fishing.

Gateway National Recreation Area is unique from other national parks in that it has few natural buffer zones and exists in a changing environment. The lands and waters of GATE represent the last remnants of the original shoreline and provide a coastal recreation resource that may serve more visitors than any national park in the system. Visitation has been estimated to be about 8 million annually. In 2001, the Jamaica Bay and Staten Island Units in New York received more than 6 million visitors and the Sandy Hook Unit in New Jersey received over 1 million visitors. Because of its urban setting, proximity to two major airports, and intense visitor use, GATE is less likely than some park units to ever offer substantial opportunities for solitude or quiet contemplative experiences.

Gateway National Recreation Area has come to demonstrate the potential of ecological reclamation in an urban setting. Scientists have noted that the ecological restoration of Jamaica Bay and other GATE areas is proof that we can work with nature and reclaim what has been severely impacted.

#### Purpose of Gateway National Recreation Area

Congress established GATE in October 27, 1972, as part of an effort to bring the NPS and its ethic of preserving and protecting outstanding resources closer to major urban areas: “In order to preserve and protect for the use and enjoyment of present and future generations an area possessing outstanding natural and recreational features, the Gateway National Recreational Area . . . is hereby established.” (16 U.S.C. 460(c)).

### Significance of Gateway National Recreation Area

Gateway National Recreation Area's primary significance is provided in its *Strategic Plan* as follows:

Gateway National Recreation Area encompasses the largest collection of natural ecosystems, wildlife habitats, historic resources, and recreational opportunities in the New Jersey/New York metropolitan areas.

Gateway National Recreation Area endeavors to incorporate the NPS conservation ethic into those values, consistent with its highly urbanized setting and visitor use patterns.

Natural and cultural resources and associated values are protected, restored, and maintained in good condition and managed within their broader ecosystem and cultural context to the maximum extent possible.

Visitors safely enjoy and are satisfied with the availability, accessibility, diversity, and quality of park recreational opportunities.

### Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1, et seq.) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks..."

16 U.S.C. 1a-1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be

exercised in derogation of the values and purposes for which these various areas have been established...”

The NPS’s regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and, as with the United States Coast Guard, Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to “promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States...” (16 U.S.C. 1a-2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its original intent and authority to regulate activities within the NPS boundaries occurring on waters subject to the jurisdiction of the United States.

#### PWC Use at Gateway National Recreation Area and the Jamaica Bay Unit

Water-based recreational activity at GATE, including wading, swimming, fishing, and boating, is a major activity in the park. All three park units are located alongside some of the finest shoreline in the nation, which includes expansive bays, basins, creeks, marshes, and open water. Motorized use of these water resources is primarily by powerboat enthusiasts and secondarily by PWC owners. Motorized watercraft accessing the recreation area typically ranges from 15 to 23 feet in length. Some yachts and fishing boats in the park are 50 to 100 feet in length. Personal watercraft represented 10% to 15% of the motorized watercraft within the recreation area prior to the April 22, 2002 prohibition. Other water activities include sailing, kayaking, canoeing, windsurfing, and kite-skiing.

Personal watercraft use within GATE has probably occurred since PWC were introduced to the public. Personal watercraft use began in the 1980's and grew very rapidly. While the increase in PWC use has recently slowed down somewhat, use still continued slowly to climb before the prohibition. The rise may be attributed to design features which make it possible now for some PWC to carry more than two passengers and even as many as six. Personal watercraft use can be characterized as intense for approximately six months out of the year.

Specifically in the Jamaica Bay Unit, of the 3,747,044 visitors to the unit in 2001, 43,062 used some form of watercraft. The NPS estimates that approximately 15% of boaters in the Jamaica Bay Unit are PWC users. The heaviest PWC use is during the summer season.

In 2001, the United States Park Police Marine Unit counted 395 PWC docked at waterfront homes of the inlets, basins, and channels leading out to Jamaica Bay. This number did not include PWC berthed at many local marinas or private boat clubs, which abound in the surrounding community. In addition, many PWC are trailered to the area and launched from various designated locations throughout the units. Based upon this activity a more realistic estimate of PWC utilizing the bay may be more that double the above figure.

Before PWC were prohibited on April 22, 2002, the Jamaica Bay Unit managed PWC use the same as other motorized vessels, without specific PWC regulations. Before the prohibition, PWC use and other motorized vessels were allowed within the Jamaica Bay Unit and were not limited to specific areas. In accordance with NPS regulations (36 CFR 3.6) motorized vessels must travel at flat wake speed when within 500 feet of

swimming beaches or within 100 feet of a diver's marker, downed water-skier, or swimmer. Also, motorized vessels can only land in designated locations. The Superintendent's Compendium for the Jamaica Bay Unit closes ocean beaches, designated swimming beaches, shorebird-nesting areas, and areas of potential visitor use to landing or launching of all motorized watercraft, including PWC. In the Jamaica Bay Unit most of the PWC users launch from city property located in Brooklyn and Queens or private docks along the inlets to Jamaica Bay. Launching occurs at various points around the bay, including Paerdegat Basin Marina, Shellbank Basin, Sheepshead Bay, and homeowner piers. The Gateway Marina in Floyd Bennett Field prohibits PWC use. Personal watercraft users usually use shore areas, explore coves, circle around the marsh islands, and sometimes venture into the small channels connecting the marshes. However, the majority of PWC users operate primarily within Jamaica Bay, out to Breezy Point, and in open waters facing the ocean.

Of particular concern is the impact to GATE's estuaries in all three units, which include the open salt water, salt marshes, and the fresh water, which empties into these bodies of water. Gateway National Recreation Area has over 3,000 acres of fresh and tidal wetlands. The wetlands provide the habitats for literally hundreds of birds, fish, mammals, reptiles, amphibians, shellfish, and other invertebrates both migratory and indigenous species. Therefore, due to the delicate nature of these areas and other visitor experience issues, the NPS has concluded that PWC use should be limited to navigational channels only to be used for the purpose of providing passage access through park waters.



## **RESOURCE PROTECTION AND PUBLIC USE ISSUES**

### **Gateway National Recreation Area Environmental Assessment**

As a companion document to this NPRM, NPS has issued the Personal Watercraft Use Environmental Assessment for Gateway National Recreation Area. The EA was published on April 2003. Copies of the EA may be downloaded at <http://www.nps.gov/gate/pphtml/news.html>.

The purpose of the EA is to evaluate a range of alternatives and strategies for the management of PWC use in each of the units at GATE to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The assessment assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012. The assessment also compares each alternative to PWC use before April 22, 2002, when the prohibition took effect. In addition, the EA defines such terms as "negligible" and "adverse." In this document, these terms are used to describe the environmental impact. Refer to the EA for complete definitions.

The EA evaluates four alternatives addressing the use of PWC at the three park units of GATE — Jamaica Bay, Staten Island, and Sandy Hook. Each unit is assessed separately. The following describes the four alternatives discussed in the EA for Jamaica Bay Unit:

Under alternative A, by using a special regulation, PWC use would be reinstated under the management policies that applied to PWC use before April 22, 2002, as defined in the Jamaica Bay Unit Superintendent's Compendium. Before the prohibition on PWC

use, the Jamaica Bay Unit had no specific regulations directed at managing PWC use; rather PWC use was addressed under the category of motorized vessels. The only limitation in addition to State rules was a prohibition on launching or recovery of vessels within the unit.

Under alternative B, PWC use would be managed by imposing geographic restrictions on PWC use at the Jamaica Bay Unit in addition to those restrictions in effect before the April 22, 2002 prohibition. Therefore alternative B would incorporate the pre-prohibition restrictions, which are the same as alternative A, and add additional geographic restrictions. Under alternative B, additional geographic restrictions on PWC use would prohibit the use of PWC in all areas of the unit with the exception of the following navigational channels: North Channel (Island Channel), Beach Channel (South Channel), Grass Hassock Channel, Rockaway Inlet, and Broad Channel to the trestle bridge (the Raunt). Personal watercraft owners living on the adjacent creeks, basins, and waterways would be allowed access through the unit; however, they must stay within the buoyed navigational channels from Gerritsen Creek, Mill Basin, Paerdegat Basin, Shellbank Basin, Hawtree Creek, Breezy Point, and Roxbury. Personal watercraft use would be prohibited from all waters along Breezy Point, and a 150-foot buffer would be implemented around all protected areas within Jamaica Bay. All State and Federal PWC regulations that existed prior to the prohibition would remain in effect and be enforced by the NPS.

Under alternative C, the same restrictions would be in effect as under the previous two alternatives except that Winhole Channel would be open to PWC use, maintaining a circuitous route around Jamaica Bay, eliminating the need for PWC users to turn around

in navigational channels, and allowing more area for PWC use in Jamaica Bay. The final alternative is the no-action alternative which assumes a scenario of discontinuing all PWC use at this unit. The NPS would take no further action to promulgate a special regulation to allow PWC use, which would result in a ban on PWC use at the unit.

A preferred alternative was selected that would best fulfill park responsibilities as trustee of the sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

Based on the environmental analysis prepared for PWC use at GATE, Jamaica Bay Unit, alternative B is the preferred alternative. Alternative B allows PWC use restricted to navigational channels under a special regulation with additional geographic restrictions. This document proposes regulations to implement alternative B.

As previously noted the NPS will consider comments received on this proposal, as well as the comments received on the EA. In the final rule, the NPS will implement these alternatives as proposed, or choose a different alternative or combination of alternatives. Therefore, the public should review and consider the other alternatives contained in the EA when making comments on this proposed rule.

The following summarizes the predominant resource protection and public use issues associated with reinstating PWC use at the Jamaica Bay Unit of GATE under the proposed rule which implements alternative B. Each of these issues is analyzed in the Gateway National Recreation Area, Personal Watercraft Use Environmental Assessment.

## **Water Quality**

The proposed rule will manage PWC to prevent further degradation of water quality in estuarine and ocean waters, to manage PWC emissions that enter the water in accordance with anti-degradation policies and goals, and to protect plankton and other aquatic organisms from PWC emissions and sediment disturbances so that the viability of dependent species is conserved.

Most research on the effects of PWC on water quality focuses on the impacts of two-stroke engines, and it is assumed that any impacts caused by these engines also apply to the PWC powered by them. There is general agreement that two-stroke engines discharge a gas-oil mixture into the water. Fuel used in PWC engines contains many hydrocarbons, including benzene, toluene, ethylbenzene, and xylene (collectively referred to as BTEX) and polycyclic aromatic hydrocarbons (PAHs). PAHs are also released from boat engines, including those in PWC. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of these compounds — BTEX and PAH — have potential adverse effects on water quality.

A typical conventional (i.e., carbureted) two-stroke PWC engine discharges as much as 30% of the unburned fuel mixture directly into the water. At common fuel consumption rates, an average two-hour ride on a PWC may discharge 3 gallons of fuel into the water. According to the California Air Resources Board, an average PWC can discharge between 1.2 and 3.3 gallons of fuel during one hour at full throttle. It is recognized that as time passes fewer of these types of PWCs are used and newer models sold have substantially reduced emissions. Hydrocarbon (HC) discharges to water are

expected to decrease substantially over the next 10 years due to mandated improvements in engine technology.

Under this proposed rule PWC use would be restricted in Jamaica Bay to the North Channel (Island Channel), Broad Channel (the Raunt), Beach Channel (South Channel), Plumb Beach Channel, Gerritsen Inlet toward Sheepshead Bay, Coney Island Channel, and Grass Haddock Channel. Personal watercraft use would be prohibited from the Breezy Point waters. For the purpose of evaluating impacts on water quality under this proposed rule, it is assumed that the same number of PWC would be operating in Jamaica Bay as were operated before the prohibition, but would be confined to smaller areas under these new restrictions. Further, it is assumed that PWC users that formerly used the Breezy Point area would no longer use any of the unit's waters.

Under this proposed rule water quality impacts from PWC emissions based on ecotoxicological and human health benchmarks would be negligible for all pollutants in all areas in 2002 and 2012. Closing Breezy Point to PWC use would have a beneficial effect on water quality. Restricting PWC use to the main navigational channels within Jamaica Bay would have beneficial impacts on shoreline areas, but would not reduce the number of PWC or emissions and would result in more localized adverse effects of PWC pollutants. Cumulative water quality impacts from all watercraft under the proposed rule based on ecotoxicological benchmarks would be negligible for all pollutants in all areas in 2002 and 2012. Cumulative water quality impacts from all motorized use based on human health benchmarks are expected to be minor in 2002 and negligible in 2012. Therefore, this proposed regulation would not impair water quality.

### **Air Quality**

The proposed rule intends to manage PWC activity so that PWC air emissions of harmful compounds do not contribute to air quality degradation, and do not adversely affect visitor health and safety.

Personal watercraft emits various compounds that pollute the air. In the two-stroke engines commonly used in PWC, the lubricating oil is used once and is expelled as part of the exhaust; and the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM), and carbon monoxide (CO). Personal watercraft also emits fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

For example, in the presence of sunlight VOC and NO<sub>x</sub> emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway irritation, and chest pain during inhalations. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. NO<sub>x</sub> and PM emissions associated with PWC use can also degrade visibility. NO<sub>x</sub> can also contribute to acid deposition effects on plants, water, and soil. However, because emission estimates show that NO<sub>x</sub> from PWC are minimal (less than 5 tons per year), acid deposition effects attributable to PWC use are expected to be minimal.

Under this proposed rule, PWC annual emissions in 2002 and 2012 would result in major adverse impacts from CO emissions and negligible adverse impacts from PM emissions in the Jamaica Bay Unit. For ozone precursors, impacts from VOC would be major adverse in 2002, decreasing to moderate adverse in 2012, and impacts from NO<sub>x</sub> would be minor adverse in 2002 and 2012. The cumulative impacts from all boating activities under this proposed rule would be major adverse for CO (as defined by the Federal conformity rule) and negligible for PM. The proposed rule would not impair air quality to human health from airborne pollutants related to PWC use since the proposed alternatives will not change or jeopardize existing ambient air quality levels, while they will improve air quality levels when compared to the PWC use under previously existing conditions.

Personal watercraft annual emissions under this proposed rule would result in moderate adverse impacts for ozone in 2002 and 2012. Before April 22, 2002, there were no perceptible qualitative visibility impacts or observed ozone injury on plants. Impacts on visibility from airborne pollutants related to PWC use would be negligible. Cumulative impacts from all PWC and other marine boating activities would result in moderate adverse ozone impacts and negligible visibility impacts in 2002 and 2012. Based on this analysis, this proposed rule would not impair air quality related values.

### **Soundscapes**

The proposed rule would manage noise from PWC use in affected areas so that visitors' health and safety is not adversely affected and would improve conditions so visitor enjoyment will not be disturbed by PWC use.

The primary soundscape issue relative to PWC use is that other visitors may perceive the sound made by PWC as an intrusion or nuisance, thereby disrupting their experiences. This disruption is generally short term because PWC travel along the shore to outlying areas. However, as PWC use increases and concentrates at beach areas, related noise becomes more of an issue, particularly during certain times of the day.

The biggest difference between noise from PWC and that from motorboats is that the former frequently leave the water, which magnifies noise in two ways. Without the muffling effect of water, the engine noise is typically 15 dBA louder and the smacking of the craft against the water surface results in a loud “whoop” or series of them. With the rapid maneuvering and frequent speed changes, the impeller has no constant “throughput” and no consistent load on the engine. Consequently, the engine speed rises and falls, resulting in a variable pitch. This constantly changing noise is often perceived as more disturbing than the consistent noise from motorboats.

Personal watercraft users tend to operate close to shore, to operate in confined areas, and to travel in groups, making noise more noticeable to other recreationists. Motorboats traveling back and forth in one area at open throttle or spinning around in small inlets also generate complaints about noise levels; however, most motorboats tend to operate away from shore and to navigate in a straight line, thus being less noticeable to other recreationists.

This proposed rule for Jamaica Bay would prohibit PWC use throughout the unit except at flat wake speed in designated navigational channels. PWC use would be prohibited at Breezy Point. As a result, it is assumed that 35 PWC would use the channels in Jamaica Bay on a peak summer day, and 10 would use Rockaway Inlet.



Personal watercraft noise impacts in these areas would be similar to what existed before the prohibition on PWC use, although more localized in the navigational channels.

Overall noise would probably be less noticeable to park visitors on the shoreline since PWC traffic would be farther away within the central channels. Personal watercraft related noise impacts would range from negligible to minor adverse over the short and long term in and near navigational channels open to PWC use. Visitors at Breezy Point would experience less noise with the removal of PWC use.

Noise from all motorized watercraft, as well as ambient noise levels occurring outside the unit, would have negligible to moderate adverse impacts on other recreational users within the unit, similar to before the prohibition on PWC use. Noise impacts would be minor to other visitors and minor to moderate compared to the natural soundscape. Therefore, the proposed rule would not impair any soundscape-related values.

### **Wildlife and Wildlife Habitat**

This proposed rule intends to protect a part of the largest collection of natural ecosystems and wildlife habitats in the New York City metropolitan area, to protect birds and other wildlife from the effects of PWC-generated noise, especially during nesting seasons and other critical life stages, to protect fish and wildlife from the adverse effects that result from the bioaccumulation of contaminants, such as PAHs, emitted from PWC and to encourage increasing biodiversity of flora and fauna.

Some research suggests that PWC use affects wildlife by causing interruption of normal activities, alarm or flight, avoidance or degradation of habitat, and effects on reproductive success. This is thought to be a result of a combination of PWC speed, noise and ability to access sensitive areas, especially in shallow-water depths. Waterfowl and

nesting birds are the most vulnerable to PWC. Fleeing a disturbance created by PWC may force birds to abandon eggs during crucial embryo development stages, prevent nest defense from predators, and contribute to stress and associated behavior changes. Impacts to sensitive species are documented under “Threatened, Endangered, or Special Concern Species.”

Under the proposed rule for the Jamaica Bay Unit, in areas that would be open to PWC use, impacts on wildlife and wildlife habitat would be short and long term, minor, and adverse. Effects are expected to be minor because species sensitive to a high level of noise and human activity would probably not regularly use these areas during summer peak periods. Requirements for PWC users to stay within navigational channels, not to access shoreline habitats, and to operate at a flat wake speed would minimize adverse effects associated with rapid approach, collision, and noise to wildlife utilizing the shoreline and nearshore habitats in the Jamaica Bay Unit.

In areas where PWC use would be prohibited, including the areas around the islands bordering Winhole Channel, impacts on shorebirds, waterfowl, and other fish and wildlife species using shallow water habitats and the shorelines would be beneficial. Restricting PWC access to large areas of shallow-water habitat in the unit would also enhance the quality of essential fish habitat in these areas, a beneficial impact.

On a cumulative basis impacts on wildlife species would be adverse and minor to moderate over the short and long term. In areas closed to PWC use (all areas outside of existing navigational channels) impacts would be beneficial; however, impacts associated with use by other motorized watercraft would continue to impact areas throughout the unit. Wildlife in areas closed to PWC use could be adversely affected by uses in the

navigational channels as a result of noise and possible water quality impacts; however, considering existing background conditions, these effects are expected to be negligible. In addition, cumulative impacts on aquatic fauna would be moderate over the short and long term. Therefore, the proposed rule would not impair wildlife, wildlife habitat, or aquatic fauna.

### **Threatened, Endangered, or Special Concern Species**

This proposed rule aims to improve the status of the unit's threatened and endangered and protected species and their habitats.

The same issues described for PWC use and general wildlife also pertain to special concern species. Potential impacts from PWC include inducing flight and alarm responses, disrupting normal behaviors and causing stress, degrading habitat quality, and potentially affecting reproductive success. Special status species at the recreation area include Federal or State listed threatened, endangered, or candidate species.

The Endangered Species Act (16 U.S.C 1531 et seq.) mandates that all Federal agencies consider the potential effects of their actions on species listed as threatened or endangered. If the NPS determines that an action may adversely affect a federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat.

Federally endangered wildlife species documented in the Jamaica Bay Unit include the roseate tern and Kemp's Ridley sea turtle. The Federally threatened piping plover and loggerhead sea turtle also occur in or near PWC use areas. In addition, the endangered leatherback sea turtle occurs in the waters of New York and New Jersey.

State-listed threatened or endangered wildlife species include the State endangered roseate tern and piping plover and the State threatened common tern, least tern, and northern harrier. The State endangered peregrine falcon nests on the Marine Park Bridge, which is outside of the Jamaica Bay Unit, but peregrine falcons utilize the area. Two State species of special concern — the black skimmer and the osprey — also occur within the unit. Federally protected whales that occur seasonally off the coast of New York and New Jersey include the endangered northern right whale, humpback whale, and fin whale.

Personal watercraft use under the proposed rule may affect but is not likely to adversely affect Federal or State threatened or endangered species in the Jamaica Bay Unit. Impacts could occur where species access or forage in channel areas remaining open to PWC use. Closing waters adjacent to Breezy Point would eliminate the potential for PWC-related adverse effects to species foraging in nearshore ocean habitats or resting or foraging along the shoreline. On a cumulative basis, threatened or endangered species may be affected but are not likely to be adversely affected under this proposed rule. The potential for adverse effects would be slightly less than before the ban on PWC use because of restricting PWC use to navigational channels within the bay, but other motorized watercraft uses would continue throughout the bay. Therefore, the proposed rule would not impair any threatened, endangered, or sensitive species.

### **Shoreline Vegetation**

This proposed regulation intends to regulate PWC use to reduce erosion in areas where shoreline vegetation is extremely sensitive, such as the islands in Jamaica Bay, and

to manage PWC use to protect sensitive shoreline areas (vegetation/erosion) from PWC activity and access.

For the Jamaica Bay Unit, impacts to shoreline vegetation and wetland habitats from PWC use would be negligible over the short and long term under the proposed rule as a result of restricting use to navigational channels, prohibiting shoreline access, limiting speeds, and establishing buffers around protected areas. Minor, adverse, direct and indirect, cumulative effects are expected. Even though PWC use would be restricted to navigational channels, other watercraft could access shallow water areas outside of the channels, potentially resulting in short- and long-term impacts on shoreline vegetation and wetland habitats. Therefore, this proposed rule would not impair shoreline vegetation or wetland habitats.

### **Visitor Experience**

In proposing this regulation, NPS aims to manage the potential conflicts between PWC use and park visitors and to help ensure that visitors safely enjoy and are satisfied with the quality of park recreational activities.

### **Impacts on PWC Users**

Although PWC users would be restricted to the navigational channels within Jamaica Bay and Rockaway Inlet, they would continue to have access to other areas outside NPS jurisdictional waters. Closing Winhole Channel to use would prevent PWC users from traveling in a circle around the bay and could frustrate some individuals. There would be a negligible adverse impact to PWC users as a consequence of the 150-foot buffer zone around protected areas. Closing ocean waters off Breezy Point and

interior areas of Jamaica Bay to PWC use would have negligible to moderate adverse impacts on users because of continued access to other areas via contiguous waters.

### **Impacts on Other Boaters**

Other boaters in the Jamaica Bay Unit would continue to interact with PWC users within the navigational channels of Jamaica Bay and Rockaway Inlet. It is assumed that the same number of PWC users as there were before the prohibition would be present but they would be concentrated in smaller areas, and congestion among PWC users is expected to increase, along with the potential for adverse effects on other boaters. This proposed rule would have minor to moderate adverse effects on the visitor experiences of other boaters now and in the future.

### **Impacts on Other Visitors**

Other visitors to the Jamaica Bay Unit would continue to interact with PWC operators, but on a limited basis. Potential interactions with other visitors, specifically birdwatchers and swimmers, would only occur when PWC users accessed the channels and basins around Jamaica Bay, with negligible adverse effects. Effects on park visitors during the off-season or non-peak hours (weekdays) would continue to be negligible. Visitors to the Jamaica Bay Unit for land-based activities would experience beneficial impacts with the removal of PWC from nearshore habitats.

Therefore, restricting PWC use to navigational channels within the bay (except for Winhole Channel), and closing ocean waters off Breezy Point to PWC use would have negligible to moderate adverse impacts on PWC recreationists. There would be a minor to moderate impact on other boaters to the unit as congestion would increase in the navigational channels. For other visitors PWC use restrictions would result in beneficial

impacts on their experiences, depending on the location and seasonal variations in activities. This proposed rule would partially meet the park's strategic goal for improved visitor satisfaction for boaters and other visitors by restricting PWC use to certain navigational channels. Cumulative effects would be negligible and most visitors would continue to be satisfied with their experiences at the unit.

### **Visitor Conflict and Safety**

With this proposed rule, NPS intends to minimize or reduce the potential for PWC user accidents, to minimize or reduce the potential safety conflicts between PWC users and other water recreationists, to decrease visitor accident and incident rates, and to help ensure that visitors safely enjoy and are satisfied with the quality of park recreation activities.

Some research suggests that PWC use is viewed by some segments of the public as a nuisance due to the noise, speed, and overall environmental effects, while others believe that PWC use is no different from other watercraft, and recreationists have a "right" to enjoy this sport. Specific complaints have been received from some anglers who have complained during surf casting season in Jamaica Bay because PWC infringe upon their area.

This proposed rule would eliminate the potential for PWC-related accidents within those areas of the Jamaica Bay Unit closed to PWC use, a beneficial impact. Personal watercraft users and other boaters would experience minor to moderate adverse impacts in the North Channel when turning around within the navigational channel at the trestle bridge. Cumulative impacts would be reduced as a result of restricting PWC use, with negligible to minor impacts depending on the type of activity and its location.

Cumulative minor adverse impacts on areas outside unit waters could increase if PWC use in other areas increased.

### **The Proposed Rule**

As established by the April 2000 NPS rule, PWC use is prohibited in all NPS areas unless determined appropriate. The process used to identify appropriate PWC use at each unit of the GATE considered the known and potential effects of PWC on park natural resources, traditional uses, and public health and safety.

NPS proposes to allow limited PWC use at the Jamaica Bay Unit of GATE under a special regulation in § 7.29. Since the NPS is proposing different special rules for each of the three units (Jamaica Bay, Staten Island, and Sandy Hook) within the GATE, three new paragraphs would be added to § 7.29.

Under this proposed rule, NPS proposes to allow PWC use within the Jamaica Bay Unit but only in certain navigational channels and not exceeding a flat wake speed. These channels are: North Channel (Island Channel), Beach Channel (South Channel), Grass Hassock Channel, Plumb Beach Channel, Gerritsen Inlet and Broad Channel to the trestle bridge (the Raunt).

In addition to the limitations in the proposed special regulation, nonconflicting State and Federal regulations regarding PWC use will be enforced by the NPS pursuant to 36 CFR 3.1. For the Jamaica Bay Unit this would mean New York State law.

The applicable New York law includes the following:

1. No operation from sunset to sunrise.
2. Must be 16 years old and have a boating certificate to operate a PWC or be accompanied by person with a boating certificate.



3. Must have a visual distress flag and an auditory distress signal (horn or whistle).
4. Must have a mandatory personal floatation device. PWC must have at least two ventilators to remove any explosive gases.
5. An engine cut off lanyard (if equipped) must be attached to the operator.

PWC users would be prohibited from launching or landing any vessels within the unit.

Personal watercraft users living on the adjacent creeks, basins, and waterways would be allowed access through the unit if they stay within one of two alternative routes. One allowed route, if present, is a buoyed route. The alternative would be to take the most direct route to access the designated navigational channels from Gerritsen Creek, Mill Basin, Paerdegat Basin, Shellbank Basin, Hawtree Creek, Breezy Point, and Roxbury.

## COMPLIANCE WITH OTHER LAWS

### **Regulatory Planning and Review (Executive Order 12866).**

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This determination is based upon the EA analysis prepared for PWC use at all three units. All preferred alternatives would best fulfill park responsibilities as trustee

of the habitat; ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attaining a wide range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The EA has taken into consideration the following Federal, State and other agency plans and activities:

Federal

- a. 1972 Coastal Zone Management Act.
- b. 1982 Coastal Barriers Resources Act.
- c. Gerritsen Creek Restoration Project (Army Corps of Engineers).
- d. Jamaica Bay Ecosystem Restoration Project (National Park Service and Army Corps of Engineers).
- e. Jamaica Bay Shoreline Protection Project (National Park Service and Army Corps of Engineers).
- f. Jamaica Bay Ecological Research and Restoration Team (National Park Service and Army Corps of Engineers).

State

- a. 2000 Non-Point Source Management Program (New York State).
- b. New Jersey Coastal Management Plan.
- c. New York Coastal Management Program.
- d. New Jersey Watershed Management Area 12.
- e. 1998 New York Clean Water Action Plan.

- f. New Jersey Water Quality Standards.
- g. 2000 New Jersey Water Quality Inventory Report.
- h. New York Water Quality Standards, New York State.

#### Implementation Plan

- a. New York and New Jersey State Boating Laws.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The NPS published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and NPS policy and park management.

#### **Regulatory Flexibility Act.**

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This certification is based on a report entitled “Economic Analysis of Personal Watercraft Regulations in Gateway National Recreation Area” (RTI, International, March 2002). This document may be viewed on the park’s website at: <http://www.nps.gov/gate/pphtml/news.html>

#### **Unfunded Mandates Reform Act.**

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

**Takings (Executive Order 12630).**

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

**Federalism (Executive Order 13132).**

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

**Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

**Paperwork Reduction Act.**

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

**National Environmental Policy Act.**

As a companion document to this NPRM, NPS has issued the Personal Watercraft Use Environmental Assessment for Gateway National Recreation Area. The EA was open for public review and comment from May 15 to June 15, 2003. Copies of the EA may be downloaded <http://www.nps.gov/gate/pphtml/news.html>.

### **Government-to-Government Relationship with Tribes**

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. In the EA, the Sacred Sites/Native American Concerns section states: This is not an issue at GATE because there are no known sacred sites or Native American concerns at GATE or, more specifically, within the vicinity of existing or potential future landing areas for PWC use areas.

### **Clarity of Rule**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example [§ 7.29

**Gateway Recreation Area.]** (5) Is the description of the rule in the "Supplementary

Information” section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also email the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

**DRAFTING INFORMATION:** The primary authors of this regulation are: Barry T. Sullivan, General Superintendent, José Rosario, Chief, Operations Support, HQ, Liam Strain, Park Ranger, Operations Support, HQ, Gateway NRA; Sarah Bransom, Environmental Quality Division; and Jerry Case, Regulations Program Manager.

## **PUBLIC PARTICIPATION**

You may submit comments, identified by the number RIN 1024-AD41, by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting electronic comments.
- E-mail at [GATE\\_PWCCComments@louisberger.com](mailto:GATE_PWCCComments@louisberger.com)
- Mail or hand deliver to: General Superintendent, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10306

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However,

we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

### **List of Subjects in 36 CFR Part 7**

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137(1981) and D.C. Code 40-721 (1981).

2. Amend § 7.29 by adding paragraph (d) to read as follows:

#### **§ 7.29 Gateway National Recreation Area.**

\* \* \* \* \*

(d) Personal watercraft (PWC): Jamaica Bay Unit.

(1) PWC are prohibited from operating within the Jamaica Bay Unit of the Gateway National Recreation Area except in the following designated areas:

- (A) North Channel (Island Channel).
- (B) Beach Channel (South Channel) to the Gil Hodges Memorial Bridge.
- (C) Grass Hassock Channel.
- (D) Plumb Beach Channel to the Gil Hodges Memorial Bridge

(E) Broad Channel to the trestle bridge (the Raunt).

(F) Gerritsen Inlet toward Sheepshead Bay, Coney Island Channel, and open ocean

(2) PWC use within the Jamaica Bay Unit of the Gateway National Recreation Area is subject to the following:

(i) PWC users may not operate above a flat wake speed.

(ii) PWC users are prohibited from landing or launching within the unit.

(3) The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated:

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**Paul Hoffman,**

*Deputy Assistant Secretary, Fish and Wildlife and Parks.*

**BILLING CODE 4312-52**